No. 75-552
No. 75-561

IN THE

Supreme Court of the United States

October Term, 1975

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR, *et al.*,

Petitioners,

v.

SIERRA CLUB, *et al.*,

Respondents.

AMERICAN ELECTRIC POWER SYSTEM, *et al.*,

Petitioners,

v.

SIERRA CLUB, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR AMAX INC.

JOHN L. WARDEN
48 Wall Street,
New York, New York 10005.
Counsel for Amax Inc.,
Respondent Supporting the
Position of Petitioners

RICHARD J. UROWSKY,
SULLIVAN & CROMWELL

JEROME H. SIMONDS,
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Of Counsel

February 26, 1976

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-552

THOMAS S. KLEPPE, Secretary of the Interior, *et al.*,
Petitioners,

v.

SIERRA CLUB, *et al.*,
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No. 75-561

AMERICAN ELECTRIC POWER SYSTEM, *et al.*,
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SIERRA CLUB, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR AMAX INC.

Amax Inc. became a party to this proceeding on November 7, 1975, following the Court of Appeals' decision and the expiration of time to file a petition for certiorari. (X 1)[1] Amax is therefore a respondent in this Court,

[1] Citations preceded by X are to pages of the appendix to this brief.

but supports the position of petitioners. Sup. Ct. R. 21 (4).

Although Amax believes that the Court of Appeals' decision should be reversed for the reasons set forth in the briefs of the federal and intervenor petitioners, there is a further ground for reversal insofar as the decision relates to Amax's Belle Ayr South coal mine. The mine is presently subject to the Court of Appeals' injunction as modified by the District Court on November 14, 1975, pursuant to a limited remand.

Amax leased the federal coal lands underlying the Belle Ayr South mine in September 1965. The company subsequently purchased the surface rights to this area, and began preliminary mining operations in late 1972 in accordance with a mining and reclamation plan approved by the Department of the Interior. Commercial deliveries of coal from Belle Ayr South commenced shortly thereafter, and the mine is currently producing coal at the rate of approximately eight million tons a year. (X 5, 8)[2]

This action was filed by respondents Sierra Club and others in June 1973. Amax was not named as a defendant, and no relief affecting Belle Ayr South or any other operating mine was sought during the first two and a third years of the case. Instead, respondents directed their attention at the approval of new coal leases by the Department of the Interior and the commencement of new mining operations pending a determination of whether the federal petitioners were acting pursuant to a plan or pro-

[2] Deliveries from Belle Ayr South are committed to public utility generating stations having an aggregate capacity of 11,400,000 kilowatts and comprising part of electric utility systems serving about 10 percent of the country's population. (X 6, 16, 18)

posal for the regional development of coal resources in the so-called Northern Great Plains Province.

On February 14, 1974, the District Court found that no such plan existed (F. 8, Pet. 75-552, App. D, 88A), and the Court of Appeals did not set aside that finding (Pet. 75-552, App. B, 39A). Moreover, the Court of Appeals was not prepared even in June 1975 to determine that a plan for regional development existed with sufficient definiteness to require the preparation of a regional environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act ("NEPA"). Indeed, the court expressly held that the suspension of long-term coal leasing by the federal appellees in February 1973, and the consequent "lack of definition" in government policy since then, pending publication of the Northern Great Plains Resources Program ("NGPRP"), precluded such a finding at that time (Pet. 75-552, App. B, 46A, n. 34).

Nevertheless, on October 9, 1975 respondent Sierra Club moved the Court of Appeals to modify its existing injunction to prohibit the Secretary of the Interior from approving a further mining and reclamation plan submitted by Amax to permit continued operation of the Belle Ayr South mine under the same lease issued by the Department in 1965. On November 7, 1975 the Court of Appeals remanded respondents' motion to the District Court for consideration and disposition in light of the Court of Appeals' decision of June 1975. (X 2) Seven days later the District Court issued an order modifying the Court of Appeals' injunction to prohibit Amax from operating for more than two years under the contested mining plan and restricting the scope of its mining operations during that period. (X 3-4)

Thus, although both courts below agree that no federal plan for regional coal development existed, or

could have existed, at the time Amax obtained its coal lease in 1965 or commenced mining operations at Belle Ayr South in 1972, nevertheless the mine is subject to injunction on the basis of an alleged plan which may come into existence in 1976 or later. As it relates to Belle Ayr South, the decision below therefore rests on the retroactive assimilation of an existing project into a program which, if it ever comes into being, will necessarily do so long after the project was commenced.

No case construing NEPA has gone this far, and no such conclusion is warranted by either the language or purpose of the Act. Such a construction of the statute would mean that whenever a plan for major federal action were proposed, any previously operating projects of a kind with the subject of the plan could be enjoined from continued operation until environmental litigation surrounding the new proposal were finally resolved. The harm and dislocation emanating from such an anomalous conclusion is obvious, and should just as obviously be avoided.

In failing to rule accordingly, the courts below not only misapplied NEPA but as well departed from this Court's teachings with respect to injunctive relief. Prohibitory injunctive relief against the executive branch, paralyzing the achievement of important national objectives, is a drastic remedy, and when plaintiffs sue solely to vindicate public policy, such relief should be granted, if at all, solely as a last resort and certainly only if "the traditional standards for extraordinary equitable relief" are met. *See Rondeau* v. *Mosinee Paper Co.*, 422 U.S 49, 57 (1975). Respondent Sierra Club did not and cannot satisfy that burden as to the new projects that were the original subjects of this case, and, *a fortiori*, as to continued operation of Amax's Belle Ayr South mine, which is part of the existing environment and not of any "plan."

Conclusion

For the reasons stated herein and in the briefs of the federal and intervenor petitioners, the decision below should be reversed.

Respectfully submitted,

JOHN L. WARDEN
48 Wall Street,
New York, New York 10005.
Counsel for Amax Inc.,
Respondent Supporting the
Position of Petitioners

RICHARD J. UROWSKY,
SULLIVAN & CROMWELL

JEROME H. SIMONDS,
FREEDMAN, LEVY, KROLL & SIMONDS
Of Counsel

February 26, 1976

APPENDIX

Court of Appeals' Orders of November 7, 1975

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1975

Civil Action 1182-73

No. 74-1389

SIERRA CLUB, *et al.*,

Appellants,

v.

ROGERS C. B. MORTON, Secretary of the United States Department of Interior, *et al.*

Before:

BAZELON, *Chief Judge*, WRIGHT and MACKINNON,

Circuit Judges

ORDER

The Clerk is directed to file the motion of Amax Inc., to intervene and to file response to the motion for expansion of injunction, and on consideration thereto, it is

ORDERED by the Court that the aforesaid motion of Amax Inc., is granted.

Per Curiam

For the Court:
HUGH E. KLINE,
Clerk

By: Robert A. Bonner
ROBERT A. BONNER
Chief Deputy Clerk

Court of Appeals' Orders of November 7, 1975

ORDER

On consideration of appellants' motion to modify the temporary injunction filed January 3, 1975, and the cross-motions of the federal and intervening appellees to dissolve that injunction, it is

ORDERED by the Court that appellants' motion to modify the injunction is hereby remanded to the District Court for consideration and disposition. *See Sierra Club* v. *Morton*, — U.S.App.D.C. —, —, 514 F.2d 856, 883 (1975).

It is FURTHER ORDERED by the court that the cross-motions of the federal and intervening appellees to dissolve the injunction are hereby denied.

Per Curiam

For the Court
Hugh E. Kline
HUGH E. KLINE
Clerk

District Court Order of November 14, 1975

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA
Civil Action No. 1182-73

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

ROGERS C. B. MORTON, *et al.*,

Defendants.

ORDER

This matter came before the Court pursuant to the Order of the Court of Appeals, dated November 7, 1975, remanding to this Court, for consideration and disposition, plaintiff-appellants' motion to modify the temporary injunction issued by the Court of Appeals on January 3, 1975, as well as on plaintiffs' motion for a temporary restraining order. In view of the Court of Appeals' existing injunction and it appearing to the Court from the pleadings and affidavits submitted by the parties that plaintiff-appellants' motion to modify the injunction should be granted to the extent indicated below, it is hereby

ORDERED:

(1) That, plaintiff-appellants' motion for a temporary restraining order is hereby denied;

District Court Order of November 14, 1975

(2) That, plaintiff-appellants' motion to modify the injunction of January 3, 1975, is hereby granted in that:

(a) The surface-mining operations of intervenor-defendant Amax Inc. are enjoined from continuing on federal lands, pursuant to the mining and reclamation plan for the Belle Ayr South mine approved by the federal defendants on November 11, 1975, for more than a period of two years commencing from the date of this order or until such time as a final decision on the merits of this case is rendered and it is otherwise decreed, subject to such terms and conditions as may be provided therein.

(b) During the period set forth in subparagraph (a) above, intervenor-defendant Amax Inc. may proceed with surface-mining operations at the Belle Ayr South mine pursuant to the federally approved mining and reclamation plan but is restrained from mining more than approximately 126 acres of land each year.

(c) The Secretary of the Interior is hereby enjoined from permitting surface-mining operations on federal coal lands pursuant to the mining and reclamation plan for the Belle Ayr South mine of Amax Inc., approved by the Secretary on November 11, 1975, beyond the period set forth in subparagraph (a) above.

So Ordered.

November 14, 1975
Date

June L. Green
June L. Green
United States District Judge

Affidavit of W. Hollie Hopper, October 29, 1975

UNITED STATES COURT OF APPEALS

District of Columbia Circuit

No. 74-1389

Sierra Club, *et al.*,
Appellants,

v.

Rogers C. B. Morton, *et al.*,
Appellees.

Washington
District of Columbia } ss.:

W. Hollie Hopper, being duly sworn, deposes and says:

1. I am President of the Amax Coal Company Division, and a Vice President of AMAX Inc. ("AMAX"). I am familiar with the company's mining activities in the State of Wyoming and particularly with AMAX's Belle Ayr South mine whose operations are the subject of a motion dated October 9, 1975 by appellants Sierra Club and others.

2. AMAX's Belle Ayr South mine is an active mining operation which has been making commercial deliveries of coal for approximately three years. The mine employs more than 100 people, and commenced activity in late 1972 pursuant to a mining and reclamation plan approved by the Department of the Interior. That plan, as amended,

covers approximately 165 acres of Federal coal lands all of which form part of a 2,360 acre tract leased by AMAX from the Federal government. In January, 1974 AMAX filed a further mining and reclamation plan with the Department for the development of coal on the remainder of the leased area. If this Court directs that the Department withhold its approval of that plan, and AMAX is unable to obtain permission to continue its mining activities as previously planned, the company anticipates that it will be compelled to terminate the orderly development of the Belle Ayr South mine within five months. In that event AMAX will be unable to meet existing contractual commitments for the delivery of coal within four to five months thereafter, at which time all mining activities at Belle Ayr South would cease. Moreover, once orderly mining operations are disrupted, even if such disruption ends prior to a complete closure of the mine, the company will not be able to resume coal deliveries without sustained start-up delays which may approach nine months' duration.

3. At the present time AMAX has coal supply commitments from the Belle Ayr South mine running to tens of millions of tons for the period 1976 through 1978 alone. All of this coal is scheduled to be delivered to public utilities, in most cases pursuant to long term supply contracts entered into over the past several years. The affected generating stations of such utilities will possess a maximum aggregate generating capacity of approximately 11,400 Megawatts during the period, and the twelve utilities directly involved serve consumers in 20 different States with a service area population in excess of 17 million people. In addition other utilities will also be affected because of cooperative power

generating programs and other regional power sharing activities.

5. Many of these utilities have advised AMAX that they will not be able to obtain alternative sources of coal if the Belle Ayr South mine is shut down, and that even if such sources were to become available, which is unlikely, they would not be able to make use of such coal under current environmental fuel restrictions and boiler design limitations without redesigning generating units already in service or under construction. Moreover, since the construction or adaptation of electrical generating facilities requires extended advance planning, any anticipated dislocation of fuel supplies in the future will necessitate immediate corrective measures, involving in some instances the complete redesign or abandonment of equipment. In the case of customers scheduled to receive coal deliveries in 1976 and early 1977, it is virtually certain that alternative sources of supply could not be identified, and necessary transportation arranged, in time to avoid serious disruptions of required service.

6. Since the commencement of operations at Belle Ayr South, AMAX has expended nearly $30 million in capital investments in connection with its mining and reclamation activities. In addition, millions of dollars in equipment orders have also been committed to the project, and such commitment will become irrevocable unless the orders are cancelled within three months. As AMAX's mining program now stands, approximately 126 acres of land will be mined each year when Belle Ayr South production reaches 15 million tons annually and the mine will then employ approximately 260 people. The area mined will be subject

to continuous and on-going reclamation and revegetation activities in accordance with plans submitted to the Interior Department. Moreover, because of the thickness of the coal deposits in the Belle Ayr region, the mine will be, despite its relatively small size, the largest coal mine in the United States in terms of production by 1976, producing millions of tons of low sulphur environmentally desirable fuel annually.

7. AMAX's mining and reclamation activities at Belle Ayr South have been a matter of public record for several years. While appellants have sought injunctive relief against the initiation of coal mines not yet in operation, they have not prior to October 9, 1975 sought such relief with regard to an operating mine. AMAX and its utility customers have entered into various contractual agreements in reliance on the Belle Ayr South mine's continued operation. AMAX was not named as a defendant in this case, and did not participate in the forming of the record in the District Court. In any event, there is no support in that record for appellants' assertion that the "Amax mining plan presents substantially the same situation as the four mines which are the subject of the Court's present injunction" and that the "harm to . . . Amax from delaying the opening of this mine until this case can be resolved is far outweighed by the environmental harm." Appellants' Motion to Modify Injunction, pp. 2 and 6. Unlike the four mines which are presently affected by this Court's order, AMAX's mine is not simply contemplated, but is currently in operation, has been making deliveries of coal for three years, and presently employs over 100 people, most of whom would have to be discharged within a matter of months if mining operations are disrupted. Nor is appellants' presentation of the potential environmental harm resulting from a failure of this Court to grant extended injunctive relief accurate. Although AMAX's mining plan covers approximately 2,200 acres of Federal coal lands, the orderly development of the mine and AMAX's attendant reclamation activities will permit expansion onto only a small fraction of that area during the likely course of this lawsuit. Appellants' request for extended injunctive relief will cause great harm to AMAX and the general public, and is both untimely and unnecessary to protect appellants' interest in preventing large scale development of the affected area prior to the final resolution of this case.

W. Hollie Hopper
W. Hollie Hopper

Sworn to and subscribed before me this 29th day of October, 1975.

Ann H. Matthews
Ann H. Matthews
Notary Public
My Commission Expires Dec. 14, 1977

Affidavit of Philip Sporn, October 28, 1975

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

No. 74-139

—o—

SIERRA CLUB, *et al.*,

Appellants,

v.

ROGERS C. B. MORTON, *et al.*,

Appellees.

—o—

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

I, PHILIP SPORN, engineer and former utility executive, being duly sworn, depose and say:

1. a. I am a power system engineer who has practiced in that area of engineering in all its phases since I entered the field two years after graduation from the Columbia College of Engineering in 1917 with a degree in electrical engineering, and I have continued uninterruptedly doing that throughout the 56 years that have elapsed since then.

b. I am a licensed professional engineer in more than half a dozen states, being licensed to practice, and I have practiced, engineering in almost all branches involved in electric power generation, including mining, civil, mechanical, electrical, hydraulic, and nuclear engineering.

c. During the period 1920-71 I was in the service of American Electric Power Company (originally American Gas and Electric Company) in many engineering positions and was elected in later years vice president and chief engineer, subsequently executive vice president, and in 1947 president and chief executive officer of the company and all its subsidiaries; I served in this capacity for the next 15 years. It was during the period of my management that the company became the largest privately owned electric power system in the United States, second in size only to TVA. It also became and was recognized as the most progressive, technologically speaking, power system in the world.

d. Electric energy being a converted form of any primary energy such as coal, oil, gas, hydraulic power, or nuclear power, I specialized in advancing the art and technology of generation of electric energy from all these fuels and in a study of the technology of mining coal and applying it to the efficient production and efficient transmission of electric energy.

e. During the last 25 years, I have lectured (the last time in April 1975) on various aspects of energy at Columbia University, Massachusetts Institute of Technology, Cornell University, and Manhattan College. In three of these cases, I did this while holding the appointment of visiting professor. I have also written four books on various phases of electric power, the last of which was published in 1971 by The MIT Press. My latest book deals with the energy crisis and is in process of being published by Pergamon Press of England.

f. I have served the Government of the United States as an adviser to the Federal Power Commission and the Department of State, as consultant to the Joint Committee

on Atomic Energy of the Congress, as a member of the United States official delegation to the Geneva Conference on the Peaceful Uses of Atomic Energy in 1955, and since 1960 as a member of the General Technical Advisory Committee to the Office of Coal Research, which within the last year has become part of the Energy Research and Development Administration, dealing with the problems of coal mining, coal conversion to electricity, and coal conversion to synthetic gas and fuel oil.

2. I have given this synoptic summary of my professional work in energy in the hope that the Honorable Court will be able to get a better understanding of the source of my presumption to address it in this affidavit and because I deeply feel that we are now in an unprecedented energy crisis, the solution of which depends on how intelligently and determinedly we enroll to our side the two major indigenous fuels we possess and which nobody can deny us, which can give us energy independence. I refer to nuclear fuel and coal, which together can do so, but which either one alone cannot achieve. My affidavit, I hope, will help the Court to a slightly better understanding and to a proper solution to the problem placed before it.

3. a. The energy crisis which I have alluded to is one which threatens our national safety, economy, and way of living. This crisis is not the result of an overnight capricious action on the part of OPEC occasioned by the Yom Kippur War of 1973. It is, rather, the result of a long chain of misguided policies leading to wasteful use of oil and gas and reliance on cheap (for the moment) foreign oil, the detour to which was made as far back as 1945, rather than developing domestic supplies.

b. The economic problems and issues that this has raised are of the greatest. The Arab and other members of OPEC are fully aware of this. History may, indeed probably will, see the OPEC operation as a major, shrewdly conceived, attack on our way of living and an artful way to transfer into the hands of a small cabal the accumulated capital wealth of the industrially advanced Western world and of most of the smaller nations.

c. The common tie of the members of this cabal is that within their borders lie extensive deposits of oil, discovered and developed in the main by the United States and Great Britain, at great cost and with great technological skill. Within the last two years this oil, which the economy of the United States had grown increasingly to rely on for its needs, was shut off completely by an embargo. It is true that it was lifted after a relatively short period, but at a quintupling of price per barrel and there is no reason why this embargo cannot be imposed again. Only recently the price of this oil was increased by 10%. Unless we are prepared to meet another embargo, or, at best, merely other huge increases in price, it could cause an almost complete collapse of our highly advanced society, its national security, its industrial system, its style of living, its social-economic system.

d. A few striking figures: In 1974 the 17 oil producing nations involved in OPEC took in $133 billion, virtually all of it from the sale of petroleum, according to data published by the International Monetary Fund on March 10, 1975. That was three times the total export sales of these 17 countries in 1973. It gave them a trade surplus of $97 billion. By contrast the United States, Canada, Japan, and the industrial nations of Western Europe had a combined

1974 trade deficit of $40 billion, four times that posted by these countries in 1973. For other industrial nations the trade deficit was $27 billion. The poor, less developed, countries were in the red by $26 billion. These deficits totaled $93 billion and represent the counter figure to the $97 billion surplus of the oil exporting countries.

4. Proposed solutions to this crisis have been outlined in a series of documents prepared by the Federal Energy Administration and by the Energy Research and Development Administration. In the main I agree with these solutions, except that I believe the actions they propose need to be sharpened and amplified. These consist of three important areas of action:

a. Reduction in rate of growth in energy consumption brought about by a system of conservation in every energy area: transportation, household, commercial and industrial use.

b. Substantial increases in new energy supplies mainly in the exploitation to a much greater extent of our two indigenous fuels, coal and nuclear. Coal needs to be expanded from the presently roughly 600 million tons per year to 1,500 million tons per year in the year 2000. Nuclear power needs to be expanded to about the same level, that is the equivalent of 1,500 million tons of bituminous coal per year. These two fuels will then account for over 50% of our total energy in the year 2000.

c. A very important item in this connection and bearing on the subject of this affidavit is the fact that this means heavy expansion of the percentage

of our total energy that will be used in the electric form, since neither coal nor nuclear fuel can be used conveniently, if at all, in any other form than the electric. Thus, the electric portion of the total energy will have to be expanded from the present 27% to 50%.

d. The balance of our energy will be provided by domestic oil and domestic gas, including a small component of synthetic oil, and by a small component of imported gas.

5. Unfortunately things are not going too well in our efforts to expand the use of nuclear fuel or to expand the use of coal. Nuclear fuel has run into a great many difficulties that have been encountered by the electric utility industry in its efforts to expand its nuclear generation due to the increased costs of construction, brought about by inflation, by immoderate intervention, by technological developments, and by a considerable worsening in their financial condition that made it difficult, if not impossible, to raise the capital needed. While some of these factors apply also to the building of power plants using coal, this is tragic in a sense because one of the problems that has been confronting us is the difficulty of getting additional supplies of coal. And yet more coal, if made available, can probably be absorbed by the energy economy more easily than any other fuel to relieve the OPEC pressure on us.

Coal use in general has not increased very much in the United States in the last two years of this great crisis. The total coal mined in 1974 was practically equal to that mined in 1973 and the coal mined in the first nine and a half months of 1975 was only 0.7% above the coal mined in 1974 for the corresponding period.

And so, we are not only not moving along the proper route to resolve the energy crisis, but we are running a grave danger that we will get an electrical energy crisis due to lack of nuclear capacity and to lack of coal generated capacity brought about primarily by inability to get coal. This is the heart of the matter that is before the Honorable Court. Surely a double headed crisis of vast proportions would be created or aggravated if this Court were to direct the Department of the Interior to withhold its approval of the present proposed mining plan of Amax on its Belle Ayr South Mine Project, a going concern whose closure is presently being sought.

6. I have carefully read some thirteen affidavits that are being submitted to this Honorable Court, one of them by W. Hollie Hopper of Amax, Inc., and twelve others by various executive officers of power companies, cities, or cooperatives. I am enormously impressed by the large amount of work that must have been expended to date in planning the generating facilities involving large additions to power systems serving 6,713,000 customers (therefore a total population estimated by me in excess of 20 million people), all of which would be adversely affected in the electric service they would be able to receive, or rather not receive, if the tens of millions of tons of coal that are at issue for the period 1976 through 1978 were interfered with so that their uninterrupted production did not become available to power the more than 10 million kilowatts of generating capacity that will normally be made operative by this fuel.

Not only is the production of the coal in itself an enormous economic operation but every generating unit of the score and more that are involved in totality represents a

complex project in itself: it involved a large amount of time before the coal for it was found—not easy to do these days—studied, and a decision reached to make a commitment for it with assurance that it would meet environmental standards; it was followed by engineering studies and specifications prepared for the purchase of boilers to satisfactorily burn this coal; the specifications then led to requests for bids, receipt of bids, analysis of proposals, and eventual purchase of boilers, turbines, and a host of other equipment; and all this in turn was followed by initiation of construction. This is the situation that eleven of the twelve electric power organizations, whose affidavits I have read, find themselves in.

The collective man years of effort involved in this are almost incalculable and all of it would be put into jeopardy of complete uselessness if the orderly procedure for the production and eventual shipment of the proper coal in each case was interrupted.

7. Fuel, in this case coal, is both the nucleus and foundation for an electric energy generating project. We badly need the continued construction and placing into service of the more than 10 million kilowatts of generating capacity involved here both to supply the electric energy uninterruptedly to some 10% of the population of the United States but also to make possible the satisfaction by electric energy of needs that would only a few years ago have been supplied by oil and gas, the supply of which is now in crisis.

8. Any blocking operation that puts a halt to the continued development of this vitality needed coal to supply an indispensable block of electric energy generation would

not only involve great economic losses but I believe would create major social-economic damage and confusions, affecting perhaps 20 million of our people. I therefore strongly urge the Honorable Court to clear the way for the continued operation and development of the Amax Belle Ayr mine and the more than 10 million kilowatts of electric generating capacity which it will vitalize and bring into being.

PHILIP SPORN

Sworn to and subscribed before me
this 28th day of October, 1975.

Warren J. Fenimore
Notary Public

WARREN J. FENIMORE
Notary Public, State of New York
Residing in Kings County
Kings Co. Clk's No. 24-4604916
Certificate Filed in
New York Co. Clk's
Commission Expires March 30, 1976

Reply Affidavit of W. Hollie Hopper, November 5, 1975

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

No. 74-1389

SIERRA CLUB, *et al.*,

Appellants,

against

ROGERS C. B. MORTON, *et al.*,

Appellees.

WASHINGTON
DISTRICT OF COLUMBIA } ss.:

W. HOLLIE HOPPER, being duly sworn, deposes and says:

1. I am President of the Amax Coal Company Division and a Vice President of AMAX Inc. ("AMAX"). I submit this affidavit in reply to appellants' memorandum dated November 3, 1975.

2. Appellants state in their memorandum that AMAX is at liberty to continue its mining activities at Belle Ayr South by proceeding onto privately owned coal lands, and urge this Court to enjoin the orderly development of the Belle Ayr South mine on federal land as proposed in AMAX's current mining and reclamation plan. In the alternative, appellants suggest that the Court permit AMAX to continue its mining operations as presently planned during the next two years, but enjoin approval of any

subsequent development of the mine pending final resolution of this lawsuit. Although AMAX owns approximately 1,120 acres of fee coal in the Belle Ayr South region, the narrow boundaries of the fee area will not permit the separate development of the coal reserves it contains. The private coal land can be mined and reclaimed on a sound engineering and economic basis only in conjunction with the mining of federal coal, and no mining plan exists, or has ever existed, for the independent development of the fee reserves. Furthermore, the dislocation of present mining operations and the attempt to redirect the course of the Belle Ayr mine exclusively onto private lands is environmentally unsound. As stated in the final Environmental Impact Statement ("EIS") published by the Department of the Interior, any such course would delay and "complicate reclamation plans for the entire mine." EIS, p. 8. The precipitate action urged by appellants is not only impractical from a mining standpoint, but would render useless years of planning and reclamation activity by AMAX.

3. Appellants' alternative suggestion that this Court permit the continuation of AMAX's present mining operations during the next two years, but enjoin approval of any subsequent development of the mine pending final resolution of the lawsuit, is equally without merit. Although appellants allege that AMAX has exaggerated the effect of a closure of the Belle Ayr mine on electrical energy consumers across the nation, they do not dispute that the impact on many utilities will be both severe and immediate.*

* AMAX has never contended that 10% of the United States' population relies exclusively on coal from the Belle Ayr mine for electric energy, as appellants claim in their memorandum. (p. 2, n. 3) It is true, however, that approximately this percentage of the population may be seriously affected if AMAX's utility customers are forced to curtail electric service because of a closure of the Belle Ayr South mine.

Nor do appellants deny that under AMAX's existing mining plan only a small area of federal coal land will be disturbed during the pendency of this lawsuit. Appellants have thus conceded that no proper basis exists for injunctive relief against present operations at the Belle Ayr mine. The alternative suggestion that this Court now issue an injunction relating to future mining activity which will not commence for two years is wholly unnecessary and would serve no environmental or other purpose. If AMAX's present mining plan is approved by the Department of the Interior, and appellants subsequently prevail on the merits in this action, any relief to which appellants may be entitled with regard to the Belle Ayr mine can then be effectively awarded, including the revocation or modification of the mining plan presently at issue.

W. Hollie Hopper
W. Hollie Hopper

Sworn to and subscribed to before me the 5th day of November, 1975.

Ann H. Matthews
Ann H. Matthews
Notary Public
My Commission Expires Dec. 14, 1977